IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

Munna Vs. State of Rajasthan
(D.B. Criminal Jail Appeal No.1690/2002)

D. B. Criminal Jail Appeal under Sec.374 (2) Cr.P.C. against the judgment dated 18-6-2002 in Sessions Case No.121/2001 passed by Shri Ghanshyam Giri, RHJS, Additional Sessions Judge (Fast Track) Baran.

Date of Judgment: July 16, 2007.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA
HON'BLE MR. JUSTICE SANGEET LODHA

Ms. Rajesh Kandwal, Amicus Curiae, for the appellant.

Mr. M.L.Goyal, Public Prosecutor for the State.

BY THE COURT: (PER HON'BLE Shiv Kumar Sharma,J.)

Munna, appellant herein, was put to trial before learned Additional Sessions Judge (Fast Track) Baran, who vide judgment dated June 18, 2002 convicted and sentenced him under section 302 IPC to suffer imprisonment for life and fine of Rs.100/-, in default to further suffer simple imprisonment for one month.

2. It is the prosecution case that on May 7, 2001 around 10.10 PM informant Bhonu (Pw.2) submitted a written report (Ex.P-6) at Police Station Bhanwargarh to the effect that his sister Halki aged 35 years was earlier married to Ranbeer, who deserted her after she gave birth to a son and a daughter. She went in Nata to Munna (appellant) who used to harass her

and frequently beat her. It was further stated in the report that on the said day at 12 noon when mother of informant went to meet Halki, she found her new born son under a tree whereas dead body of Halki was lying nearby. On that report a case under section 302 IPC was registered and investigation commenced. Necessary memos were drawn, statements of witnesses were recorded and after completion of investigation charge sheet was filed against the appellant. In due course the case came up for trial before the learned Additional Sessions Judge (Fast Track) Baran. Charge under section 302 IPC was framed against the appellant, who denied the charge and claimed trial. The prosecution in support of its case examined as may as 13 witnesses. In the explanation under Sec.313 CrPC, the appellant claimed innocence. No witness in support of his defence was however examined. Learned trial Judge on hearing final submissions convicted and sentenced the appellant as indicated herein above.

3. We have heard learned Amicus Curiae and learned Public Prosecutor and with their assistance scanned the material on record.

4. Death of Halki was undeniably homicidal in nature. As per Post Mortem Report (Ex.P-10) following ante mortem injuries were found on the dead body:-

1. Lacerated wound vertically 7cm x 2cm x skull deep on Lt. parietal region of scalp 8cm above Lt. ear.
2. Lacerated wound 4cm x 1cm x skull deep Horizontally on parietal bone of both side 20cm above root of nose.

3. Superficial burn 7cm x 4cm on post elbow
4. Superficial burn 5cm x 5cm on post Lt. elbow
5. Superficial burn 5cm x 3cm on Rt. knee
6. Superficial burn 4cm x 2cm on Rt. thigh

7. Superficial burn 4cm x 2cm on Lt. ankle
8. Superficial burn 5cm x 3cm on ant. abdominal wall of spleen area
9. A buster 5cm x 4cm present on umbilicus
10. other small buster 1 x 1cm present on ant.& post abdominal wall.

Injury No.3to10 are post mortem.

In the opinion of Dr. Vishnu Kumar Gupta (Pw.8) the cause of death was coma due to injury to brain matter.

5. Structure of the prosecution case is founded on the sole testimony of Mangli Bai (Pw.5), who in her deposition stated that she had seen appellant inflicting injury with stone on the person of Halki. She however stated in her police statement (Ex.D-3) that when she found Halki lying in the pool of blood. She disowned the police statement.

6. Informant Bhonu (Pw.2) in his deposition stated as under:-

"मेरी मां आम के नीचे गई उसको वहां पर बच्चे मिले, मेरी बहिन नहीं मिली, मेरा जीजा नहीं मिला, बहिन की लाश पास में धोरे में पडी हुई थी। वह घर पर आई घर आकर मुझे उठाया और कहा कि बहिन की लाश धोरे के पास पडी है।"

7. It appears from the evidence adduced at the trial that the appellant was implicated in the case on the basis of suspicion. Mangli Bai did not see the incident and made improvement in her testimony.

8. In Ashish Batham Vs. State of M.P. (2002)7 SCC 317, their Lordships of Supreme Court indicated that mere suspicion, howsoever strong it may be, cannot take the place of legal proof. It was observed as under:-

> "Realities or truth apart, the fundamental and basic presumption in the administration of criminal law and justice delivery system is the innocence of the alleged accused and till the charges are proved beyond reasonable doubt on the basis of clear, cogent, credible or unimpeachable evidence, the question of indicting or punishing an accused does not arise, merely carried away by the heinous nature of the crime or the gruesome manner in which it was found to have been committed. Mere suspicion, however strong probable it may be is no effective substitute for the legal proof required to substantiate the charge of commission of a crime and graver the charge is, greater should be the standard of proof required. Court dealing with criminal case at least should constantly remember that there is a long mental distance between "may be true" and "must be true" and this basic and golden rule only helps to maintain the vital distinction between "conjectures" and "sure conclusion" to be arrived at on the touchstone of a dispassionate judicial scrutiny based upon a complete and comprehensive appreciation of all features of the case as well as quality and credibility of the evidence brought on record."

9. It is well settled that suspicion howsoever strong cannot take the place of proof. Having closely scrutinised entire material on record we could not notice an iota of evidence that could conclusively establish the guilt of appellant. On the basis of probability and suspicion, liability to commit crime cannot be fastened on the appellant and he is entitled to benefit of doubt. Learned trial court appears to have convicted the appellant on surmises and conjectures, therefore the impugned judgment deserves to be quashed.

10. For these reasons, we allow the appeal and set aside the impugned judgment dated June 18, 2002 of the learned Additional Sessions Judge, (Fast Track) Baran. We acquit the appellant of the charge under

section 302 IPC. The appellant Munna, who is in jail, shall be set at liberty forthwith, if he is not required to be detained in any other case.

(Sangeet Lodha),J. (Shiv Kumar Sharma)J.

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